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23 UNITED STATES DISTRICT COURT  
24 SOUTHERN DISTRICT OF CALIFORNIA

25 GEN-PROBE, INCORPORATED,

26 Plaintiff,

27 v.

28 VYSIS, INC.,

Defendant.

CASE NO. 99CV 2668H (AJB)

SUPPLEMENTAL DECLARATION OF  
L. SCOTT BURWELL IN SUPPORT  
OF VYSIS' SUPPLEMENTAL  
OPPOSITION TO GEN-PROBE  
INCORPORATED'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
OF NONINFRINGEMENT UNDER  
THE DOCTRINE OF EQUIVALENTS

Date: November 19, 2001  
Time: 10:30 a.m.  
Place: Courtroom 1

I, L. Scott Burwell, declare and state as follows:

1. I have personal knowledge of the facts set forth in this declaration.

1           2.     I am an attorney licensed to practice in the Commonwealth of Virginia and the  
2 District of Columbia and am admitted *pro hac vice* in this case in the United States District Court for  
3 the Southern District of California. I am an associate at the law firm of Finnegan, Henderson,  
4 Farabow, Garrett & Dunner, L.L.P., and represent Defendant Vysis, Inc. in this litigation.

5           3.     I attended the deposition of Dr. Kary B. Mullis, taken on November 2, 2001 at Newport  
6 Beach, California.

7           4.     Attached as Exhibit A to this declaration is a true and correct copy of a document  
8 produced by Dr. Mullis at his deposition and marked at his deposition as Defendant's Deposition  
9 Exhibit No. 213.

10          5.     Attached as Exhibit B to this declaration is a true and correct copy of the transcript of  
11 the deposition of Dr. Kary B. Mullis, taken on November 2, 2001 at Newport Beach, California.

12          6.     Attached as Exhibit C to this declaration is a true and correct copy of a publication by  
13 Mullis and Faloona, entitled "Specific Synthesis of DNA *in Vitro* via a Polymerase-Catalyzed Chain  
14 Reaction," marked at the deposition of Dr. Mullis as Defendant's Deposition Exhibit No. 201.

15          7.     Attached as Exhibit D to this declaration is a true and correct copy of a publication by  
16 Mullis *et al.*, entitled "Specific Enzymatic Amplification of DNA In Vitro: The Polymerase Chain  
17 Reaction," marked at the deposition of Dr. Mullis as Defendant's Deposition Exhibit No. 207.

18          8.     Attached as Exhibit E to this declaration is a true and correct copy of United States  
19 Patent No. 4,683,202 to Mullis, marked at the deposition of Dr. Mullis as Defendant's Deposition  
20 Exhibit No. 203.

21          9.     Attached as Exhibit F to this declaration is a true and correct copy of a document  
22 produced by Dr. Mullis at his deposition and marked at his deposition as Defendant's Deposition  
23 Exhibit No. 212.

24          10.    Attached as Exhibit G to this declaration is a true and correct copy of a publication by  
25 Saiki *et al.*, entitled "Primer-Directed Enzymatic Amplification of DNA with a Thermostable DNA  
26 Polymerase," marked at the deposition of Dr. Mullis as Defendant's Deposition Exhibit No. 204.

1 11. Attached as Exhibit H to this declaration is a true and correct copy of a publication by  
2 entitled "DNA cleavage adapter groomed for genetic diagnostics," marked at the deposition of Dr.  
3 Mullis as Defendant's Deposition Exhibit No. 206.

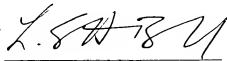
4 12. Attached as Exhibit I to this declaration is a true and correct copy of a publication by  
5 Mullis, entitled "Target amplification for DNA analysis by the polymerase chain reaction," marked  
6 at the deposition of Dr. Mullis as Defendant's Deposition Exhibit No. 208.

7 13. Attached as Exhibit J to this declaration is a true and correct copy of a publication by  
8 Mullis, entitled "The Polymerase Chain Reaction in an Anemic Mode: How to Avoid Cold  
9 Oligodeoxyribonuclear Fusion," marked at the deposition of Dr. Mullis as Defendant's Deposition  
10 Exhibit No. 204.

11 14. Attached as Exhibit K to this declaration is a true and correct copy of United States  
12 Patent No. 4,683,195 to Mullis *et al.*, marked at the deposition of Dr. Mullis as Defendant's  
13 Deposition Exhibit No. 205.

14 I declare under penalty of perjury under the laws of the United States of America that the  
15 foregoing is true and correct to the best of my knowledge and belief.

16 Executed this 6<sup>th</sup> day of November, 2001, at Washington, D.C.

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20 L. Scott Burwell  
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## **EXHIBITS**

### **Supplemental Declaration of L. Scott Burwell in Support of Vysis' Opposition to Gen-Probe Incorporated's Motion for Partial Summary Judgment of Noninfringement under the Doctrine of Equivalents**

Exhibit A	Document produced by Dr. Mullis at his deposition (213) .....	4
Exhibit B	Transcript of Dr. Kary B. Mullis .....	6
Exhibit C	Publication by Mullis and Faloona, entitled "Specific Sythesis of DNA <i>in Vitro</i> via a Polymerase-Catalyzed Chain Reaction" .....	154
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